IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of	**MAIL STOP AF**
Kotaro Kaneko	Group Art Unit: 2435
Application No.: 10/647,383	Examiner: APRIL YING SHAN
Filed: August 26, 2003	Confirmation No.: 2047
For: CONTROLLING COMPUTER PROGRAM, CONTROLLING APPARATUS, AND	

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicant respectfully requests review and withdrawal of the final rejection of claims 1-4, 11-14, 19 and 24-26 as set forth in the final Office Action dated August 17, 2009. Claims 1, 11 and 19 are independent. This Request is being filed with a Notice of Appeal. No amendments[1] are being filed with this Request.

I. Rejections Under 35 U.S.C. § 103(a)

Claims 1-4, 11-14, 19 and 24-26 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Togawa et al. (U.S. Patent No. 5,918,008, hereinafter "Togawa") in view of Applicant's Admitted Prior Art (hereinafter "AAPA"). This rejection is respectfully traversed.

Claim 1 recites a computer program stored on a computer-readable recording medium and causing a controlling apparatus intended to control an image forming apparatus to execute the following procedures:

(1) storing a preset list of programs that are authorized to be run on the controlling apparatus to control the image forming apparatus;

(2) confirming each program running on the controlling apparatus;

[1] The Office requested that Applicant provide a complete listing of the claims even when no amendments are presented, to minimize the chance of data entry errors. A complete listing of the claims is not presented herewith because this Request is limited, by rule, to a total of five pages. The pending claims are contained in the Amendment filed on June 23, 2008.

(3) judging a program, which is **not included** in the preset list of programs that are authorized be run to control the image forming apparatus among programs whose running states have been confirmed, as an illegal program resulting from a computer virus infection; and

(4) deleting or isolating the program that is judged to be the illegal program.

Claim 11 recites a controlling apparatus for controlling an image forming apparatus. The controlling apparatus of claim 11 comprises a storage unit for storing in advance a preset list of programs that are authorized to be run for controlling the image forming apparatus. The controlling apparatus of claim 11 also comprises a processor that is configured to perform functions corresponding to procedures (2)-(3) of claim 1. Claim 19 recites a controlling method for a controlling apparatus intended to control an image forming apparatus. The method of claim 19 comprises steps corresponding to procedures (1)-(4) of claim 1.

Accordingly, features (1)-(3) of claim 1 are common to each of independent claims 1, 11 and 19. Claims 1, 11 and 19 thus each recite that a preset list of programs is stored. The preset list of programs are authorized to be run on the controlling apparatus to control the image forming apparatus. In addition, claims 1, 11 and 19 each recite that each program running on the controlling apparatus is confirmed, and a program, which is **not included** in the preset list of programs that are authorized be run to control the image forming apparatus among programs whose running states have been confirmed, is judged as an illegal program resulting from a computer virus infection.

The Office alleges that Togawa discloses all the features of claims 1, 11 and 19, except for the feature of a controlling apparatus that controls an image forming apparatus. The Office alleges that the AAPA cures the deficiencies of Togawa for failing to disclose or suggest this feature. The rejections of claims 1, 11 and 19 are legally and factually erroneous, for at least the following reasons.

Togawa discloses a storage device that prevents files stored thereon from being infected with a computer virus. The function of the storage device of Togawa is to have the ability to freely use files stored thereon with a personal computer while preventing the breeding of a virus and to delete a file infected with a virus or restore the infected file into an uninfected state (see Column 1, lines 25-28). With reference

to Figure 2, the storage device 1 includes a disk 10 on which files are stored, and a virus checker 15. The virus checker 15 can be activated at periodic intervals or on command (see Column 8, lines 18-21). The storage device 1 also includes a table registering means 17 which registers a virus-infected file that is detected by the virus checker 15 in a infection management table means 16 (see Column 8, lines 21-28 and 58). The infection file management table means 16 functions as a repository for virus-infected files, and the table registering means 17 writes the virus-infected files into the infection management table means 16.

When a request for access to one of the files stored on the disk 10 is received, a judging means 18 references the infection file management table means 16 to determine if the requested file is infected with a virus. That is, the judging means 18 references the infection file management table means 16 to determine if the requested file has been registered as a virus-infected file in the infection file management table means 16, in which case it is judged that the requested file is infected with a virus (see Column 8, lines 25-29).

Figure 3 of Togawa illustrates an implementation of the storage device 1 being connected to a personal computer 2a, i.e., a general-purpose computer (see Column 10, lines 11-13). As illustrated in Figure 3, the storage device 1 includes an original information management file 34, which is used to manage original information of files stored in the disk 30, and original information of a virus checker prepared for inspecting the files stored on the disk 30 (see Column 10, lines 23-27). The storage device 1 also includes a version upgrade information management file 35, which is used to manage differential information (i.e., version update information) concerning a file stored in the disk 30, and history information (i.e., version update history information) concerning the differential information brought about due to modification. In addition, the version information management file 35 is used to manage differential information concerning an upgraded version of the virus checker (i.e., virus definition update information), and history information concerning the history of modifications of the information of the virus checker (i.e., virus definition update history information) (see Column 10, lines 34-35).

The Office asserted that the original information management file 34 corresponds to the preset list of programs as recited in claims 1, 11 and 19, and that

the differential information contained in the version information management file 35 corresponds to a program which is not included in the preset list of programs as recited in claims 1, 11 and 19.

The Office's assertion that Togawa discloses the judging operation of claims 1, 11 and 19 is contrary to the disclosure of Togawa. In particular, the system of Togawa requires *a priori* knowledge of whether a file or program constitutes a virus, or else the virus checker would not be capable of detecting if a file stored on the disk 30 is infected with the virus. This is evidenced by the need for original information of the virus checker, as well as the differential information of the virus checker, which is virus definition version update information.

Togawa does not disclose or suggest that a file which is **not included** in the original information management file 34 is judged to be a file having been infected with a virus. On the contrary, Togawa discloses an entirely different configuration, in which the virus checker determines whether files that **are included** in the original information management file 34 and/or the differential information that **is included** in the version information management file 35 are infected with a virus, with reference to the original information of the virus checker and any updated virus definition information (differential information) of the virus checker (see Column 10, lines 35-41 and Column 13, lines 28-36).

The Office alleged that because the original information stored in the original information management file 34 can be updated and stored as differential information in the version information management file 35, that this updating operation somehow corresponds to judging whether a file which is **not included** in a preset list of authorized programs is judged to be an illegal program. This interpretation is not supportable. The virus checker of Togawa does not determine that a file which **is included** in the original information management file 34 has been infected with a virus if there is corresponding difference information in the version information management file 35.

Furthermore, in either case of whether the virus checker determines whether files which **are included** in the original information management file 34 or differential information which **is included** in the version information management file 35 have

been infected with a virus, the virus checker determines whether files and/or information which **are included** in a file 34, 35 have been infected with a virus.

The Office disregarded a fundamental distinction between Togawa and the claimed invention, in that Togawa discloses that files and/or information which **are included** in the files 34, 35 are checked for viruses. Accordingly, the virus checking operation of Togawa and the subsequent quarantining of infected files involves a judgment of files **which are included** in the disk 30 and therefore **are included** in either the original information management file 34 and/or the version information management file 35. Therefore, the virus checker of Togawa determines whether known files stored on the disk 30 are infected with a virus.

Accordingly, Togawa does not disclose or suggest: (1) storing a preset list of programs that are authorized to be run on the controlling apparatus to control the image forming apparatus; and (3) judging a program, which is **not included** in a preset list of programs that are authorized be run to control the image forming apparatus among programs whose running states have been confirmed, as an illegal program resulting from a computer virus infection, as recited in claims 1, 11 and 19. The AAPA also does not disclose or suggest these features.

Therefore, no obvious combination of Togawa and AAPA can result in the subject matter of claims 1, 11 and 19, since Togawa and AAPA, either individually or in combination, fail to disclose or suggest all the recited features of claims 1, 11 and 19.

II. Conclusion

For at least the foregoing reasons, as well as other reasons set forth in Applicant's prior responses, the rejections contained in the final Office Action are factually and legally erroneous. Therefore, the final Office Action does not present a record that is appropriate for consideration by the Board of Appeals. Withdrawal of the final Office Action is respectfully submitted to be in order.

Respectfully submitted,
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Date: January 12, 2010

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